

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JERRY GODDARD,)
)
Appellant,)
)
v.)
)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)

PCHB No. 734

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50 civil penalty for an alleged
Open-burning violation of respondent's Regulation I; having come on
regularly for hearing before the Pollution Control Hearings Board on
the 27th day of May, 1975, at Lacey, Washington; and appellant, Jerry
Goddard, appearing pro se and respondent, Olympic Air Pollution Control
Authority, appearing through its attorney, Fred D. Gentry; and Board
members present at the hearing being W. A. Gissberg (presiding), Chris
Smith and Walt Woodward and the Board having considered the sworn
testimony, exhibits, records and files herein and having entered on

1 the 2nd day of June, 1975, its proposed Findings of Fact, Conclusions
2 of Law and Order, and the Board having served said proposed Findings,
3 Conclusions and Order upon all parties herein by certified mail,
4 return receipt requested and twenty days having elapsed from said
5 service; and


6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 2nd day of
11 June, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 1st day of July, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

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18 CHRIS SMITH, Chairman

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20 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

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Mr. Jerry Goddard
2036 E. 4th
Olympia, Washington 98501

Laurel Darling

LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
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OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
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FINDINGS OF FACT,
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AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged open-burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (William A. Gissberg, presiding officer; Chris Smith, Chairman, and Walt Woodward) at a formal hearing in the Board's Lacey Office on May 27, 1975.

Appellant appeared pro se. Respondent appeared through Fred D. Gentry. Sherri Darkow, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

From testimony heard and exhibits examined, the Pollution Control

EXHIBIT A

1 Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd
5 Ex. Sess., has filed with this Board a certified copy of its Regulation
6 I containing respondent's regulations and amendments thereto.

7 II.

8 Section 9.01(b) of respondent's Regulation I requires a permit
9 from respondent for open fires other than for recreation purposes,
10 disposal of waste on premises of private dwellings or from flares,
11 torches and waste gas burners. Section 3.27 authorizes a civil penalty
12 of not more than \$250 for any violation of Regulation I.

13 III.

14 Appellant, an Olympia service station owner, also owns property on
15 which he does not have his private dwelling, at the intersection of
16 4th Avenue and Wilson Street in Olympia, Thurston County. Instructed by
17 City of Olympia officials that he must demolish a hazardous old garage
18 on the property, appellant did so and then sought and obtained from
19 the Olympia Fire Department a permit to burn "scraps and brush"
20 resulting from the garage demolition. He was assured by fire department
21 spokesmen that no other permits were required for the proposed open
22 fire. The department's permit was valid and in force on September 6,
23 1974.

24 IV.

25 On September 6, 1974, appellant and an assistant ignited a pile
of wood waste from the demolished garage. Asphalt shingles, tar

27 FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

paper and linoleum had been removed from the waste pile and were not ignited; these petroleum based materials were hauled away from the property. Appellant and/or his attendant were in attendance at the fire until 5:30 p.m. when all that remained was a bed of coals.

V.

At about 6:30 p.m. on September 6, 1974, an inspector on respondent's staff was at the scene of the fire in response to a citizen complaint. The inspector, an experienced fire-fighter, saw no evidence of petroleum products in the coals but detected the "distinct odor of rubber or petroleum products" emanating from the fire scene. Later, he ascertained that appellant did not hold a permit for the fire from respondent. Accordingly, he issued to appellant Citation No. 336, citing Section 9.01 of respondent's Regulation I ("demolition open fire without a valid OAPCA permit") and Citation No. 337, also citing Section 9.01 ("burning of prohibited materials at demolition site"). Subsequently, and in connection therewith, respondent served appellant with a civil penalty assessment of \$50, which is the subject of this appeal.

VI.

On and before September 6, 1974, there was a misunderstanding between the Olympia Fire Department and respondent on respondent's requirement for a demolition fire permit from respondent. As a result of this confusion, appellant was given misinformation by the department concerning his permit requirements.

VII.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 From these findings, the Pollution Control Hearings Board comes
2 to these

3 CONCLUSIONS OF LAW

4 I.

5 Appellant, although given misinformation on this point, was
6 required to have had a demolition open-burning permit from respondent
7 (Section 9.01(b) of respondent's Regulation I) and, therefore, was in
8 violation of Section 9.01 as detailed in Citation No. 336.

9 II.

10 Appellant, who carefully removed petroleum-based products from
11 the garage waste pile before igniting it, was not in violation of
12 Section 9.01 as detailed in Citation No. 337.

13 III.

14 The civil penalty assessment of \$50, being one-fifth of the
15 maximum allowable amount, is reasonable. But the actual collection of
16 this amount is not justified in view of the misinformation appellant
17 was given concerning the permit. Suspension of the penalty would be
18 proper.

19 IV.

20 Any Finding of Fact which should be deemed a Conclusion of Law is
21 hereby adopted as such.

22 Therefore, the Pollution Control Hearings Board issues this

23 ORDER

24 The appeal is denied, but the \$50 penalty is suspended pending no
25 similar violation of Regulation I by appellant for a period of six
26 months from the date this order becomes final.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington, this 2nd day of June, 1975.

2 POLLUTION CONTROL HEARINGS BOARD

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4 CHRIS SMITH, Chairman

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7 W. A. GISSBERG, Member

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9 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
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